



# Florida Department of Environmental Protection

Marjory Stoneman Douglas Building  
3900 Commonwealth Boulevard  
Tallahassee, Florida 32399-3000

Charlie Crist  
Governor

Jeff Kottkamp  
Lt. Governor

Michael W. Sole  
Secretary

## **CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

14 May 2007

U.S. Army Corps of Engineers  
Jacksonville District  
Post Office Box 4970  
Jacksonville, Florida 32232-0019

c/o

Edward A. Swakon, P.E., President  
EAS Engineering, Inc.  
55 Almeria Avenue  
Coral Gables, FL 33134

**Variance Modification No. 0180701-005-EM**  
**Variance No. 0180701-002-EV, Miami-Dade County**  
**Miami River Maintenance Dredging – Federal Navigation Channel**

Dear Mr. Swakon:

Your request to modify this variance on behalf of the U.S. Army Corps of Engineers (USACE) was received on January 23, 2006, and has been reviewed by Department staff. The proposed modification is to extend the original variance expiration date to match the expiration date of Permit No. 0180701-004-EI. The original variance expiration date was September 23, 2006. The size of the mixing zone granted by the variance is also being reduced to 1000 meters, or 150 meters beyond the Miami River navigational channel, within Biscayne Bay, whichever is closer to the point of turbidity generation. The channel terminates at USACE Station 0+00 of "Cut 1," as depicted on the drawings for Permit No. 0180701-004-EI. Originally, the mixing zone encompassed the full length of the river, from bank to bank, plus 150 meters beyond the channel.

### **Permit Background**

On June 17, 2002, the Department issued a Conceptual Environmental Resource Permit (ERP) to the U.S. Army Corps of Engineers (USACE) that tentatively approved maintenance dredging of the Miami River federal navigation channel (Permit No. 0180701-001-EC). The USACE proposed to dredge approximately 877,500 cubic yards of material from 5.5 miles of the river channel. The disposal method was to be determined following chemical analyses. The conceptual permit did not authorize construction; an Individual ERP was still required. The

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expiration date for the conceptual permit is June 17, 2022. The Notice of Intent to Issue the conceptual ERP, which describes the basis for issuance, is available for review on the web site for the Bureau of Beaches and Coastal Systems at:

[http://bcs.dep.state.fl.us/env-prmt/dade/issued/0180701\\_Miami\\_River\\_Maintenance\\_Dredging/001-EC/](http://bcs.dep.state.fl.us/env-prmt/dade/issued/0180701_Miami_River_Maintenance_Dredging/001-EC/)

On August 4, 2003, the Department issued a separate Conceptual ERP to Miami-Dade County (Permit No. 0194695-001-EC) that tentatively approved maintenance dredging of the portions of Miami River that were adjacent to the federal navigation channel. The County proposed to dredge approximately 184,000 cubic yards of material from the 5.5-miles of the river, outside the channel.

On October 20, 2003, the Department issued Permit Modification No. 0180701-003-DF. This modification allowed maintenance dredging to -15 feet Mean Low Water (MLW), plus two (2) feet overdredge, in the upper, narrower portion of Miami River. Originally, the Department only authorized dredging in the upper portion to -12.5 feet MLW due to a lack of information about the previously excavated depth of the channel.

On September 23, 2004, the Department issued an Individual Environmental Resource Permit (Permit No. 0180701-004-EI) that granted final authorization to the USACE to maintenance dredge the navigation channel within Miami River to a depth of -15 feet MLW plus two (2) feet of allowable overdepth. The dredged material is to be placed in sealed hopper barges and transferred to dockside material treatment facilities for dewatering and disposal via truck to an authorized landfill. The permit expiration date is September 23, 2009. The Notice of Intent to Issue the Individual ERP, which describes the basis for issuance, is available for review on the web site for the Bureau of Beaches and Coastal Systems at:

[http://bcs.dep.state.fl.us/env-prmt/dade/issued/0180701\\_Miami\\_River\\_Maintenance\\_Dredging/004-EI/](http://bcs.dep.state.fl.us/env-prmt/dade/issued/0180701_Miami_River_Maintenance_Dredging/004-EI/)

Also on September 23, 2004, the Department issued an Individual ERP (Permit No. 0194694-003-EI) that granted final authorization to Miami-Dade County to maintenance dredge the portions of Miami River adjacent the navigation channel to a depth of -15 feet MLW plus two (2) feet of allowable overdepth. As with Permit No. 0180701-004-EI, the dredged material is to be placed in sealed hopper barges and transferred to dockside treatment facilities for dewatering and disposal via truck to an authorized landfill.

Additionally on September 23, 2004, Variance No. 0180701-002-EV was issued to the USACE to establish a mixing zone greater than 150 meters. The authorized mixing zone encompassed the full width of Miami River (from the salinity barrier to the mouth) and an additional 150 meters beyond the maintained channel, which extended into Biscayne Bay. On the same date, the Department issued Variance No. 0194694-004-EV to Miami-Dade County to establish the same mixing zone for the portion of the maintenance dredging project adjacent the navigation channel. Both variances were valid for two (2) years from time of issuance.

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**Justification**

Miami River is part of the Biscayne Bay Aquatic Preserve, an Outstanding Florida Water (OFW). Therefore, the permittee must meet ambient (background) water quality conditions at the edge of any mixing zone, pursuant to Rule 62-4.242(2), F.A.C. Because of the sediment characteristics (i.e., fine-grained with multiple contaminants), the permittee will be unable to meet ambient water quality conditions at the edge of a standard 150-meter mixing zone. Therefore, the time extension of the mixing zone variance is necessary to allow continuation of the maintenance dredging project, which is expected to improve water quality by removing the contaminated sediment.

**Staff Assessment**

The Department acknowledges that a mixing zone greater than 150 meters is necessary for continuation of the project. However, it appears that a mixing zone that encompasses the entire river is not justified. As evidence, the contractor reported that, during the previous stages of construction in the upper portion of the river, water quality “exceedances” at the Brickell Avenue Bridge compliance point did not accurately reflect dredge activity several miles away. Unfortunately, an analysis of the turbidity plume and dissolved oxygen disturbance related to the previous dredging activities has not been submitted to the Department for review. Therefore, until further data is provided, the Department asserts that a reasonable limit for the mixing zone is not more than 1000 meters. The permittee has agreed to accept this limitation.

A **separate** permit modification (File No. 0180701-006-EM) is being processed by the Department to alter the specific conditions regarding water quality monitoring to reflect the change in the size of the mixing zone. No further dredging shall be authorized until this pending permit modification is issued.

The original variance was issued with the understanding that the permittee (and contractor) “will maintain best management practices to limit the resuspension or discharge of polluted sediments.” An example of a common BMP is an “environmental bucket,” utilized with a clamshell dredge. This differs from a typical “rock bucket” by employing a seal to help contain material. However, Contract No. W912EP-04-C-0021 previously indicated that an HPG environmental bucket is only used “if water quality requirements dictate.” The permittee is advised that, like the original variance, this time extension is granted **only** under condition that best management practices are utilized **whenever practicable**, not just when water quality violations are observed.

Staff has determined that the previously authorized activity is consistent with the statutes and rules that are currently in effect.

Staff finds that the proposed modification is expected to be clearly in the public interest. Since the proposed modification is not expected to result in any adverse environmental impact or water quality degradation, and removal of the contaminated sediments will provide long-term

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improvement in water quality, the **variance is hereby modified** as stated above. By copy of this letter, we are notifying all necessary parties of the modification.

This letter of approval extends the expiration date of Variance No. 0180701-002-EV to coincide with expiration date of Permit No. 0180701-004-EI, which is currently set to expire on **September 23, 2009**. If, at some point in the future, the Department modifies the permit to extend that expiration date, the expiration date of this variance shall continue to coincide with the new expiration date of the permit. This variance modification also changes the size of the authorized mixing zone to 1000 meters, or 150 meters beyond the Miami River navigational channel within Biscayne Bay, whichever is closer to the point of turbidity generation. A separate permit modification will be required to alter the Specific Conditions and monitoring requirements of the permit. This letter must be attached to the original variance and permit.

This variance is hereby extended unless a sufficient petition for an administrative hearing is timely filed under Sections 120.569 and 120.57, Florida Statutes, as provided below. The procedures for petitioning for a hearing are set forth below. Mediation under Section 120.573, F.S., is not available for this proceeding.

A person whose substantial interests are affected by the Department's action may petition for an administrative proceeding (hearing) under Sections 120.569 and 120.57, F.S. The petition must contain the information set forth below and must be filed (received by the clerk) in the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000.

Because the administrative hearing process is designed to redetermine final agency action on the application, the filing of a petition for an administrative hearing may result in further modification of the variance or even a denial of the application. If a sufficient petition for an administrative hearing or request for an extension of time to file a petition is timely filed, this variance modification automatically becomes only proposed agency action on the application subject to the result of the administrative review process. Accordingly, the applicant is advised not to commence construction or other activities under this variance modification until the deadlines noted below for filing a petition for an administrative hearing or request for an extension of time has expired.

Under Rule 62-110.106(4), Florida Administrative Code, a person whose substantial interests are affected by the Department's action may also request an extension of time to file a petition for an administrative hearing. The Department may, for good cause shown, grant the request for an extension of time. Requests for extension of time must be filed with the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000, before the applicable deadline. A timely request for extension of time shall toll the running of the time period for filing a petition until the request is acted upon. If a request is filed late, the Department may still grant it upon a motion by the requesting party showing that

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the failure to file a request for an extension of time before the deadline was the result of excusable neglect.

In the event that a timely and sufficient petition for an administrative hearing is filed, other persons whose substantial interests will be affected by the outcome of the administrative process have the right to petition to intervene in the proceeding. Any intervention will be only at the discretion of the presiding judge upon the filing of a motion in compliance with Rule 28-106.205, F.A.C.

In accordance with Rule 62-110.106(3), F.A.C., petitions for an administrative hearing by the applicant must be filed within 21 days of receipt of this written notice. Petitions filed by any persons other than the applicant, and other than those entitled to written notice under Section 120.60(3), F.S., must be filed within 21 days of publication of the notice or within 21 days of receipt of the written notice, whichever occurs first.

Under Section 120.60(3), F.S., however, any person who has asked the Department for notice of agency action may file a petition within 21 days of receipt of such notice, regardless of the date of publication.

The petitioner shall mail a copy of the petition to the applicant at the address indicated above at the time of filing. The failure of any person to file a petition for an administrative hearing within the appropriate time period shall constitute a waiver of that person's right to request an administrative determination (hearing) under Sections 120.569 and 120.57, F.S.

In accordance with Rule 28-106.201, F.A.C., a petition that disputes the material facts on which the Department's action is based must contain the following information:

- (a) The name and address of each agency affected and each agency's file or identification number, if known;
- (b) The name, address, and telephone number of the petitioner; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding; and an explanation of how the petitioner's substantial interests are or will be affected by the agency determination;
- (c) A statement of when and how the petitioner received notice of the agency decision;
- (d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;
- (e) A concise statement of the ultimate facts alleged, including the specific facts that the petitioner contends warrant reversal or modification of the agency's proposed action;

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- (f) A statement of the specific rules or statutes that the petitioner contends require reversal or modification of the agency's proposed action, including an explanation of how the alleged facts relate to the specific rules or statutes; and
- (g) A statement of the relief sought by the petitioner, stating precisely the action that the petitioner wishes the agency to take with respect to the agency's proposed action.

A petition that does not dispute the material facts on which the Department's action is based shall state that no such facts are in dispute and otherwise shall contain the same information as set forth above, as required by Rule 28-106.301, F.A.C. Under Sections 120.569(2)(c) and (d), F.S., a petition for administrative hearing must be dismissed by the agency if the petition does not substantially comply with the above requirements or is untimely filed.

This action is final and effective on the date filed with the Clerk of the Department unless a petition is filed in accordance with the above. Upon the timely filing of a petition this order will not be effective until further order of the Department.

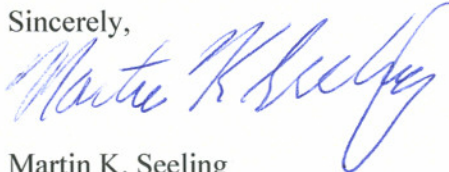
This variance modification constitutes an order of the Department. The applicant has the right to seek judicial review of the order under Section 120.68, F.S., by the filing of a notice of appeal under Rule 9.110 of the Florida Rules of Appellate Procedure with the Clerk of the Department in the Office of General Counsel, 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000; and by filing a copy of the notice of appeal accompanied by the applicable filing fees with the appropriate district court of appeal. The notice of appeal must be filed within 30 days from the date when the final order is filed with the Clerk of the Department. The applicant, or any party within the meaning of Section 373.114(1)(a), F.S., may also seek appellate review of this order before the Land and Water Adjudicatory Commission under Section 373.114(1), F.S. Requests for review before the Land and Water Adjudicatory Commission must be filed with the Secretary of the Commission and served on the Department within 20 days from the date when the final order is filed with the Clerk of the Department.

The Department does not require notice of this agency action to be published. However, the applicant may elect to publish notice as prescribed in Rule 62-110.106, F.A.C., which constitutes notice to the public and establishes a time period for submittal of any petition. When there has been no publication of notice of agency action or notice of proposed agency action as prescribed in Rule 62-110.106, F.A.C., a person may request a copy of the agency action. The Department shall upon receipt of such a request, if agency action has occurred, promptly provide the person with notice.

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If you have any questions regarding this matter, please contact Mr. Steven MacLeod at the letterhead address (add Mail Station 300), by e-mail at [steven.macleod@dep.state.fl.us](mailto:steven.macleod@dep.state.fl.us) or by telephone at (850) 414-7806

Sincerely,



Martin K. Seeling  
Environmental Administrator  
Bureau of Beaches & Coastal Systems

MKS/smm

cc: L. Rene Perez, USACE, Jacksonville  
Marie Burns, USACE, Jacksonville  
Glenn Schuster, USACE, Jacksonville  
Edward A. Swakon, EAS Engineering  
Carlos Espinosa, Miami-Dade County, DERM  
Stephen Blair, Miami-Dade County, DERM  
Mary Duncan, FWC, ISMS  
Marsha Colbert, DEP, CAMA – Biscayne Bay A.P.  
Georgia Vince, DEP, Southeast District  
Wesley Cich, DEP, BBCS  
Major Brett Norton, FWC, South Region  
BBCS Permit File

**FILING AND ACKNOWLEDGMENT**

FILED, on this date, pursuant to Section 120.52, Florida Statutes, with the designated Department Clerk, receipt of which is hereby acknowledged.

 5-14-07  
Deputy Clerk Date





# Florida Department of Environmental Protection

Marjory Stoneman Douglas Building  
3900 Commonwealth Boulevard  
Tallahassee, Florida 32399-3000

Charlie Crist  
Governor

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Michael W. Sole  
Secretary

## **CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

14 May 2007

Miami-Dade County  
Dept. of Environmental Resource Management  
701 NW 1st Court  
Miami, FL 33136

c/o

Edward A. Swakon, P.E., President  
EAS Engineering, Inc.  
55 Almeria Avenue  
Coral Gables, FL 33134

**Variance Modification No. 0194694-005-EM**  
**Variance No. 0194694-004-EV, Miami-Dade County**  
**Miami River Maintenance Dredging – Federal Navigation Channel**

Dear Mr. Swakon:

Your request to modify this variance on behalf of the Miami-Dade County was received on January 23, 2006, and has been reviewed by Department staff. The proposed modification is to extend the original variance expiration date to match the expiration date of Permit No. 0194694-003-EI. The original variance expiration date was September 23, 2006. The size of the mixing zone granted by the variance is also being reduced to 1000 meters, or 150 meters beyond the Miami River navigational channel, within Biscayne Bay, whichever is closer to the point of turbidity generation. The channel terminates at USACE Station 0+00 of "Cut 1," as depicted on the drawings for Permit No. 0194694-003-EI. Originally, the mixing zone encompassed the full length of the river, from bank to bank, plus 150 meters beyond the channel.

### **Permit Background**

On August 4, 2003, the Department issued a Conceptual Environmental Resource Permit (ERP) to Miami-Dade County (Permit No. 0194694-001-EC) that tentatively approved maintenance dredging of the portions of the Miami River that were adjacent to the federal navigation channel. The County proposed to dredge approximately 184,000 cubic yards of material from 5.5 miles of the river, outside the designated channel. The conceptual permit did not authorize construction;



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an Individual ERP was still required. The expiration date for the conceptual permit is August 4, 2023.

Previously, on June 17, 2002, the Department issued a Conceptual ERP to the U.S. Army Corps of Engineers (USACE) that tentatively approved maintenance dredging of the Miami River federal navigation channel (Permit No. 0180701-001-EC). The USACE proposed to dredge approximately 877,500 cubic yards of material from 5.5 miles of the river channel. The disposal method was to be determined following chemical analyses.

On September 2, 2003, the Department issued Permit Modification No. 0194694-002-EM. This modification primarily incorporated a water quality monitoring plan into the conceptual permit. Other minor alterations were made to clarify details of the project.

On September 23, 2004, the Department issued an Individual Environmental Resource Permit (Permit No. 0194694-003-EI) that granted final authorization to Miami-Dade County to maintenance dredge the portions of Miami River adjacent the navigation channel to a depth of -15 feet MLW plus two (2) feet of allowable overdepth. The dredged material is to be placed in sealed hopper barges and transferred to dockside material treatment facilities for dewatering and disposal via truck to an authorized landfill. The permit expiration date is September 23, 2009. The Notice of Intent to Issue the Individual ERP, which describes the basis for issuance, is available for review on the web site for the Bureau of Beaches and Coastal Systems at: [http://bcs.dep.state.fl.us/env-prmt/dade/issued/0194694\\_Miami\\_River\\_Non-Federal\\_Channel/003-EI/](http://bcs.dep.state.fl.us/env-prmt/dade/issued/0194694_Miami_River_Non-Federal_Channel/003-EI/)

Also on September 23, 2004, the Department issued an Individual ERP (Permit No. 0180701-004-EI) that granted final authorization to the USACE to maintenance dredge the navigation channel within Miami River to a depth of -15 feet MLW plus two (2) foot allowable overdepth. As with Permit No. 0194694-003-EI, the dredged material is to be placed in sealed hopper barges and transferred to dockside treatment facilities for dewatering and disposal via truck to an authorized landfill.

Additionally on September 23, 2004, Variance No. 0194694-004-EV was issued to Miami-Dade County to establish a mixing zone greater than 150 meters. The authorized mixing zone encompassed the full width of Miami River (from the salinity barrier to the mouth) and an additional 150 meters beyond the maintained river channel, which extended into Biscayne Bay. On the same date, the Department issued Variance No. 0180701-002-EV to the USACE to establish the same mixing zone for the portion of the maintenance dredging project adjacent the navigation channel. Both variances were valid for two (2) years from time of issuance.

**Justification**

Miami River is part of the Biscayne Bay Aquatic Preserve, an Outstanding Florida Water (OFW). Therefore, the permittee must meet ambient (background) water quality conditions at the edge of any mixing zone, pursuant to Rule 62-4.242(2), F.A.C. Because of the sediment characteristics (i.e., fine-grained with multiple contaminants), the permittee will be unable to

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meet ambient water quality conditions at the edge of a standard 150-meter mixing zone. Therefore, the time extension of the mixing zone variance is necessary to allow continuation of the maintenance dredging project, which is expected to improve water quality by removing the contaminated sediment.

**Staff Assessment**

The Department acknowledges that a mixing zone greater than 150 meters is necessary for continuation of the project. However, it appears that a mixing zone that encompasses the entire river is not justified. As evidence, the contractor reported that, during the previous stages of construction in the upper portion of the river, water quality “exceedances” at the Brickell Avenue Bridge compliance point did not accurately reflect dredge activity several miles away. Unfortunately, an analysis of the turbidity plume and dissolved oxygen disturbance related to the previous dredging activities has not been submitted to the Department for review. Therefore, until further data is provided, the Department asserts that a reasonable limit for the mixing zone is not more than 1000 meters. The permittee has agreed to accept this limitation.

A **separate** permit modification (File No. 0194694-006-EM) is being processed by the Department to alter the specific conditions regarding water quality monitoring to reflect the change in the size of the mixing zone. No further dredging shall be authorized until this pending permit modification is issued.

The original variance was issued with the understanding that the permittee (and contractor) “will maintain best management practices to limit the resuspension or discharge of polluted sediments.” An example of a common BMP is an “environmental bucket,” utilized with a clamshell dredge. This differs from a typical “rock bucket” by employing a seal to help contain material. However, Contract No. W912EP-04-C-0021 previously indicated that an HPG environmental bucket is only used “if water quality requirements dictate.” The permittee is advised that, like the original variance, this time extension is granted **only** under condition that best management practices are utilized **whenever practicable**, not just when water quality violations are observed.

Staff has determined that the previously authorized activity is consistent with the statutes and rules that are currently in effect.

Staff finds that the proposed modification is expected to be clearly in the public interest. Since the proposed modification is not expected to result in any adverse environmental impact or water quality degradation, and removal of the contaminated sediments will provide long-term improvement in water quality, the **variance is hereby modified** as stated above. By copy of this letter, we are notifying all necessary parties of the modification.

This letter of approval extends the expiration date of Variance No. 0194694-004-EV to coincide with expiration date of Permit No. 0194694-003-EI, which is currently set to expire on

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**September 23, 2009.** If, at some point in the future, the Department modifies the permit to extend that expiration date, the expiration date of this variance shall continue to coincide with the new expiration date of the permit. This variance modification also changes the size of the authorized mixing zone to 1000 meters, or 150 meters beyond the Miami River navigational channel once it enters Biscayne Bay, whichever is closer to the point of turbidity generation. A separate permit modification will be required to alter the Specific Conditions and monitoring requirements of the permit. This letter must be attached to the original variance and permit.

This variance is hereby extended unless a sufficient petition for an administrative hearing is timely filed under Sections 120.569 and 120.57, Florida Statutes, as provided below. The procedures for petitioning for a hearing are set forth below. Mediation under Section 120.573, F.S., is not available for this proceeding.

A person whose substantial interests are affected by the Department's action may petition for an administrative proceeding (hearing) under Sections 120.569 and 120.57, F.S. The petition must contain the information set forth below and must be filed (received by the clerk) in the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000.

Because the administrative hearing process is designed to redetermine final agency action on the application, the filing of a petition for an administrative hearing may result in further modification of the variance or even a denial of the application. If a sufficient petition for an administrative hearing or request for an extension of time to file a petition is timely filed, this variance modification automatically becomes only proposed agency action on the application subject to the result of the administrative review process. Accordingly, the applicant is advised not to commence construction or other activities under this variance modification until the deadlines noted below for filing a petition for an administrative hearing or request for an extension of time has expired.

Under Rule 62-110.106(4), Florida Administrative Code, a person whose substantial interests are affected by the Department's action may also request an extension of time to file a petition for an administrative hearing. The Department may, for good cause shown, grant the request for an extension of time. Requests for extension of time must be filed with the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000, before the applicable deadline. A timely request for extension of time shall toll the running of the time period for filing a petition until the request is acted upon. If a request is filed late, the Department may still grant it upon a motion by the requesting party showing that the failure to file a request for an extension of time before the deadline was the result of excusable neglect.

In the event that a timely and sufficient petition for an administrative hearing is filed, other persons whose substantial interests will be affected by the outcome of the administrative process have the right to petition to intervene in the proceeding. Any intervention will be only at the

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discretion of the presiding judge upon the filing of a motion in compliance with Rule 28-106.205, F.A.C.

In accordance with Rule 62-110.106(3), F.A.C., petitions for an administrative hearing by the applicant must be filed within 21 days of receipt of this written notice. Petitions filed by any persons other than the applicant, and other than those entitled to written notice under Section 120.60(3), F.S., must be filed within 21 days of publication of the notice or within 21 days of receipt of the written notice, whichever occurs first.

Under Section 120.60(3), F.S., however, any person who has asked the Department for notice of agency action may file a petition within 21 days of receipt of such notice, regardless of the date of publication.

The petitioner shall mail a copy of the petition to the applicant at the address indicated above at the time of filing. The failure of any person to file a petition for an administrative hearing within the appropriate time period shall constitute a waiver of that person's right to request an administrative determination (hearing) under Sections 120.569 and 120.57, F.S.

In accordance with Rule 28-106.201, F.A.C., a petition that disputes the material facts on which the Department's action is based must contain the following information:

- (a) The name and address of each agency affected and each agency's file or identification number, if known;
- (b) The name, address, and telephone number of the petitioner; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding; and an explanation of how the petitioner's substantial interests are or will be affected by the agency determination;
- (c) A statement of when and how the petitioner received notice of the agency decision;
- (d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;
- (e) A concise statement of the ultimate facts alleged, including the specific facts that the petitioner contends warrant reversal or modification of the agency's proposed action;
- (f) A statement of the specific rules or statutes that the petitioner contends require reversal or modification of the agency's proposed action, including an explanation of how the alleged facts relate to the specific rules or statutes; and
- (g) A statement of the relief sought by the petitioner, stating precisely the action that the petitioner wishes the agency to take with respect to the agency's proposed action.

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A petition that does not dispute the material facts on which the Department's action is based shall state that no such facts are in dispute and otherwise shall contain the same information as set forth above, as required by Rule 28-106.301, F.A.C. Under Sections 120.569(2)(c) and (d), F.S., a petition for administrative hearing must be dismissed by the agency if the petition does not substantially comply with the above requirements or is untimely filed.

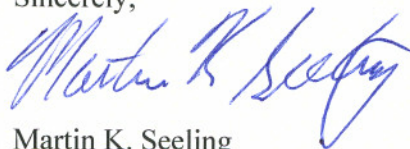
This action is final and effective on the date filed with the Clerk of the Department unless a petition is filed in accordance with the above. Upon the timely filing of a petition this order will not be effective until further order of the Department.

This variance modification constitutes an order of the Department. The applicant has the right to seek judicial review of the order under Section 120.68, F.S., by the filing of a notice of appeal under Rule 9.110 of the Florida Rules of Appellate Procedure with the Clerk of the Department in the Office of General Counsel, 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000; and by filing a copy of the notice of appeal accompanied by the applicable filing fees with the appropriate district court of appeal. The notice of appeal must be filed within 30 days from the date when the final order is filed with the Clerk of the Department. The applicant, or any party within the meaning of Section 373.114(1)(a), F.S., may also seek appellate review of this order before the Land and Water Adjudicatory Commission under Section 373.114(1), F.S. Requests for review before the Land and Water Adjudicatory Commission must be filed with the Secretary of the Commission and served on the Department within 20 days from the date when the final order is filed with the Clerk of the Department.

The Department does not require notice of this agency action to be published. However, the applicant may elect to publish notice as prescribed in Rule 62-110.106, F.A.C., which constitutes notice to the public and establishes a time period for submittal of any petition. When there has been no publication of notice of agency action or notice of proposed agency action as prescribed in Rule 62-110.106, F.A.C., a person may request a copy of the agency action. The Department shall upon receipt of such a request, if agency action has occurred, promptly provide the person with notice.

If you have any questions regarding this matter, please contact Mr. Steven MacLeod at the letterhead address (add Mail Station 300), by e-mail at [steven.macleod@dep.state.fl.us](mailto:steven.macleod@dep.state.fl.us) or by telephone at (850) 414-7806

Sincerely,



Martin K. Seeling  
Environmental Administrator  
Bureau of Beaches & Coastal Systems



**Notice of Variance Modification**  
**Variance Modification No. 0194694-005-EM**  
**Variance No. 0194694-004-EV**  
**Page 7 of 7**

MKS/smm

cc: Carlos Espinosa, Miami-Dade County, DERM  
Stephen Blair, Miami-Dade County, DERM  
Edward A. Swakon, EAS Engineering  
L. Rene Perez, USACE, Jacksonville  
Marie Burns, USACE, Jacksonville  
Glenn Schuster, USACE, Jacksonville  
Mary Duncan, FWC, ISMS  
Marsha Colbert, DEP, CAMA – Biscayne Bay A.P.  
Georgia Vince, DEP, Southeast District  
Wesley Cich, DEP, BBCS  
Major Brett Norton, FWC, South Region  
BBCS Permit File

**FILING AND ACKNOWLEDGMENT**

FILED, on this date, pursuant to Section 120.52, Florida Statutes, with the designated  
Department Clerk, receipt of which is hereby acknowledged.

Sandra K Powell      5-14-07  
Deputy Clerk      Date